

In the Matter of Merchant Mariner's Document No. Z-114681-D2 and all other Seaman Documents

Issued to: JOHN SCIALLO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1167

JOHN SCIALLO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 20 May 1959, an Examiner of the United States Coast Guard at San Francisco, California revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an ordinary seaman on board the United States SS MORMACMAR under authority of the document above described, on or about 17 March 1959, Appellant assaulted and battered another member of the crew with a deadly weapon, to wit: a fire ax.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification. In explanation of the plea, counsel stated that the act itself was not denied but that there was extreme provocation and Appellant acted in self-defense while in a dazed condition from a blow by the other seaman who was much larger than Appellant. Evidence was introduced by both parties including the testimony of Appellant and the seaman allegedly assaulted.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 17 March 1959, Appellant was serving as an ordinary seaman on board the United States SS MORMACMAR and acting under authority of his Merchant Mariner's Document No. Z-114681-D2 while the ship was in the port of Buenos Aires, Argentina.

About 0930 and again at 1300 on this date, Appellant and Ferrandini, the ship's carpenter, exchanged heated words concerning the disappearance of a special porthole cover which the latter had made. At the time of the 1300 meeting, Ferrandini used his fist to strike Appellant a blow on the forehead. The force of the blow knocked Appellant across the passageway. His forehead was cut and there remains a small scar about an inch long. Appellant returned

to his room and saw blood on his forehead when he looked in the mirror.

Less than five minutes later, Appellant walked along the passageway toward Ferrandini's room. There was a fire ax on the bulkhead opposite the door to the room. Appellant took the ax, went into the room, told Ferrandini to get out of his bunk, and struck him on the forehead with the ax when he started to get up. Ferrandini then punched, pushed and kicked Appellant until he was out of the room.

As a result of this blow, Ferrandini suffered a cut about six inches long which bled profusely and required five or six stitches to close. He was hospitalized in Buenos Aires for two weeks and was still receiving treatment at the U. S. Public Health Service Hospital at San Pedro at the time of the hearing seven weeks after the incident occurred. The injury was diagnosed as a concussion and fractured skull.

Appellant is about 58 years of age. Ferrandini is approximately 25 years younger and 40 pounds heavier than Appellant.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that after he was struck by the much larger and younger seaman, Appellant was not capable of acting rationally as indicated by his dazed and incoherent condition. The evidence warrants the conclusion that Appellant momentarily lost control of himself and was incapable of carrying out a willful assault. This was an isolated incident during Appellant's thirty-five years at sea whereas Ferrandini was a troublemaker by reputation.

Revocation, which would not only deprive Appellant of his livelihood but also of his retirement pension within a few years, constitutes punitive, rather than remedial, action in the light of Appellant's prior clear record. The purpose of this proceeding is not to punish Appellant but to determine his fitness to continue sailing. Hence, it is urged that the remedial purpose of the law would be served by placing Appellant on probation in order to maintain a check on his future conduct.

APPEARANCE: Roos, Jennings and Haid of San Francisco, California by John Paul Jennings,
 Esq., of Counsel

OPINION

The above findings of fact as to what occurred on 17 March are substantially in accord with Appellant's testimony.

Despite the disparity in the age and size of the parties, Appellant's claim of self-defense cannot prevail because the immediate danger to him had terminated when he returned to his room after being struck by Ferrandini. As stated by the Examiner, Appellant's conduct several minutes later was a separate and distinct assault and battery with a deadly weapon. See Commandant's Appeal Decision No. 1069 citing Corous Juris to this effect. At this time, Appellant would not have been in any danger if he had stayed away from Ferrandini's room.

It is my opinion that there is no merit in the contention that Appellant's conduct was due to the fact that he was not able to act rationally. The testimony by others as to Appellant's dazed and incoherent condition refers to a time after the fire ax incident when Appellant had been further beaten by Ferrandini. According to Appellant's testimony, he was conscious of what he was doing and no particular intent or willfulness is required in these proceedings. Appellant testified that he got excited when he looked at the mirror in his room and saw blood on his forehead; and that he wanted to frighten Ferrandini because "if he done it once, he will do it again."

I agree with the Examiner that an order of revocation is usually appropriate in this type of case. Nevertheless, the order will be modified to a substantial period of suspension in view of Appellant's many years of service with an unblemished record. It is my opinion that this is for the best interest of safety at sea and does not constitute punitive action against Appellant.

ORDER

The order of the Examiner dated at San Francisco, California, on 20 May 1959, is modified to provide that Appellant's seaman documents are suspended outright for a period of one year. Appellant's documents are further suspended for an additional one year which shall not become effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed during the period of outright suspension or within one year of the termination of the outright suspension.

As so MODIFIED, said order is AFFIRMED.

J A Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 10th day of May 1960.